2: Hudson E-4,5 (1936)-1938 RQ2 Kazak RQ2

695 [692] Kazak common law[33] describe it after it had been considerably codified and systematized by Russian administrators.[34] A system of "people's courts," presided over by three judges elected subject to government approval was instigated, trial procedure formalized, and appellate courts established. According to my informants, whose ideas though somewhat vague agreed on the main point, the court of the bij had formerly been rather loosely organized. As mentioned above there was no fixed succession to the office of bij; a particular case might be referred to any outstanding individual who would render a decision according to his lights or interests.

Trial procedure consisted of hearing the evidence under oath of direct witnesses, if any, to the acts under consideration and of specially selected "character witnesses," relatives of the two parties. The "character witnesses" were not directly concerned in the case under consideration but were chosen from among the more distant relatives of the litigants and had to be acceptable to the opposing side.[35] The judge for his efforts in the [693] case was rewarded with presents from both parties if the affair could be settled to their mutual satisfaction,[36] but according to my informants he would frequently weigh his decision in favor of the individual from whom the largest present might be expected.

Concerning the cultural attitudes toward various offenses and specific methods of punishment or amounts of compensation there is great discrepancy and contradiction not only between the accounts of different writers but frequently within the pages of one report. The details of indemnification in particular cases are not of immediate concern but the question of the ultimate source of compulsion for enforcing them is of importance.

● 696 The bij's court had no direct executive or police powers. My informants were unable to say what would happen if a man refused to pay a judgment rendered against himself. Kargabaiev said, "It would never happen." I was not able to continue this line of inquiry but, although public opinion was clearly the final and only real source of coercion, yet it appears, as mentioned in connection with baranta, that the creditor might be permitted and perhaps expected to take matters into his own hands by attempting to collect the obligation by force. Grodekov[37] also gives indication that it might be possible for an individual incorrigibly lacking in social cooperation to be expelled from his uru.

689 626 Expulsion was also apparently the punishment for grave offenses against society as a whole, as for example serious breaches of the exogamic rule for which it was impossible to atone by compensation. Such cases, according to the informants, were very rare but used occasionally to happen when a man and girl who were close relatives fell in love with one another. It would be necessary for them to "go to another aul, or to the mountains, or to the city."

[33] See: Izraitsov, *Obychnoe Pravo*; Ibragimov, *Zametki o Kirgizskom Sude*; Samokvasov, *Sbornik Obychnago Prava*, 200–43; Koelow, *Das Gewohnheits Recht*; Petri, *Über die Rechtsbegriffe*; Grodekov, *Kirgizy i Karakirgizy*; Dingelstedt, *Le Droit coutumier*.

[34] The most complete account in English of the old Kazak customary law, largely translated from the Russian edition of Levshin, has been recently published by Riazanovskii (*Customary Law of the Kirghiz*).

[35] Dingelstedt, *Le Droit coutumier*, 323–26; Levshin, *Description des hordes*, 400.

[36] Dingelstedt, *op. cit.*, 220.

[37] *Kirgizy i Karakirgizy*, 246–48.

631 kinsmen (1) are not brought in, but the people in the same village as
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[672]

1. Note 1 to item 161 of the Draft of a code on the Administration of the Semirechie and Syr-Darya Regions: "If in the commission of a crime, damage is inflicted on state or private property, the guilty person, in addition to his personal penalty by law, is sentenced to compensate for the damage. In case of insolvency of the guilty person, the payment of the damages among the Kazakhs is referred to his kinsmen, on the basis of customs."

the defendant. Then, depending on the size of the fine, either the whole village takes part in the payment of the livestock, or only those 50 or 10 tents to which the defendant belongs; c) the transfer of nomads from one volost to another or from village to village takes place, for the most part, to acquire land rights for agriculture, since at present the nomadic population attaches very great importance to
[672] land use; d) the baranta /form of legal or approved private seizure of
579 livestock/ has now ceased to a great extent. Robberies are very few.
[694] After murders it is not necessary to go the place where the blood was shed to receive staisfaction. It is not necessary to revert to force for suits and offenses, since if satisfaction is not received, they can turn to the Russian authority, which will force the people's courts to try the the case and satisfy the plaintiffs. Therefore in all cases of this kind there is no need of seeking protection among kinsmen; e) Now there is no seizure of land by one clan from another, which might cause other clans to unite among themselves for purposes of defense.

631 In spite of all this, an attraction to their clans does exist,
618 although some clans belong to several volosts. This is supported by influential persons, the representatives of their clans, since the clan principle helps to maintain /15/ their importance among the people and helps in collecting a majority of votes in elections. (1) This

1. The persons of the native administration, /namely/ the volost administrators and the village elders, are elected by the people, and the appointment is confirmed by the oblast or uyezd administration.

attraction is stronger in those volosts which are composed almost exclusively of one clan, with villages from one branch. However in the villages kinship in the female line is acquiring great importance.

692 But their interference in the court was strictly forbidden.

The decrees of the extraordinary sessions were final. The examination of cases in the volost and extraordinary sessions was determined by custom.

Marital and family cases were settled by biis in court according to folk customs. In marital cases, the side which was dissatisfied with the decision of the people's court could appeal to the uyezd chief, who was deciding /reshal/ the case, and in more important cases, the decision could be presented to the military governor for review.

The Kazakhs could turn to a Russian court with a petition to judge their case, with the mutual consent of both sides, expressed in a written document.

The court of the biis was rendered clearly and publicly.

It was the obligation of the local Kazakh chiefs to produce the defendants in court and to present witnesses on the demand of the biis.

The decree of the biis was inscribed in brief in a special book. The biis were required to affix their seals to a judgment.

/179/ The decision of the biis was announced to both sides, and a copy of the decree authenticated by the affixing of a seal, was given to the side in whose favor the case was decided.

696 The carrying out of the decisions of the court was laid to the duty of the volost officials, who were subject to suit for delayed fulfillment of the decisions, on the basis of general laws for the inaction of the authorities, and also subject to the repayment of losses, if such losses were incurred by their delay. (1)

1. Articles 181-210 of the projected code for the administration of the Semirechie and Syr-Darya oblasts.

* * * *

693 Under the khans, the biis were designated from a number of rivals, petitioning for this office with gifts (one or more horses), and who were known for their intelligence, authority, erudition and experience. They did not consult the wishes of the people. Candidates whose ancestors had not been biis could receive this office only rarely and with difficulty.

The Kokandians did not touch this system.

At present many place intelligence and justice in the biis

693 arrangements.

When a suit or part of it is abandoned without consequence because of distance or some other reason, a biilyk is not collected.

A biilyk is not taken when a session is abandoned by force of an earlier decision. Also when an earlier decision is overruled, the biilyk received for it is returned.

When the bii decrees that the period of time of an oath is to be extended because of the illness of the swearer, he receives biilyk for this labor.

According to bii Sultan Kanaev, of the Chimkent uyezd, a biilyk is not taken even in such cases where the defendant clears himself by oath. He pays only about 20 or 40 kopeks then, up to one ruble, for receiving the document of acquittal from the bii with the affixing of the seal. This collection is called mukhrana ("for the seal").

681 /198/ Losses and court costs (chygyn) are included in the fine itself. When the fine has already been obtained, the biis can refuse a suit for the recovery of court costs, with the exception of cases concerning wergeld, for in such cases many people are summoned into court, and the cost of the summoning adds up to a considerable sum which cannot be covered by a part of the wergeld. (1)

1. According to Torgai, the expenses for a suit concerning wergeld can be separated from the wergeld. All pay equally for the wergeld /po khunu/, but for the expenses the guilty party pays first of all, and then the clan, and the latter pays only when the former already has no property left.

When a suit ends without a fine, the winner of the case seeks reimbursement for the losses and court expenses which he has also been required to pay in one session of the court or another.

691 The period of time for the payment of the fine is recorded in the document of the judgment, but this measure appears in part to be inoperative. The customary law does not assume a period of time.

696 In the case of the defendant's insolvency or his absence, the exaction is extended to his group of ten (unbasilas), and when their 697 means have been exhausted, to the group of fifty, then to the village, which is noted in the document. (2) Only that which was necessary for

2. In ancient times when the payer was insolvent, the group of ten, or fifty, etc., in order, did not pay for him,

696 672

but his entire lineage or entire clan directly. For example, in the case of insolvency of a defendant from another lineage but the same clan, the plaintiff received the exaction from the entire lineage, but when the defendant was from another clan, then he obtained it from the entire clan.

life was not taken away.

When the defendant is insolvent, if the sum of the fine is large, for example 1500 rubles, it is decreed to be paid directly by his group of fifty and his village, by-passing the group of ten.

The exaction is not extended further than to that circle upon which the oath was imposed.

An exaction from a cummunity in the order established by the biis, takes place on the basis of an apportionment made by the community itself among the tents (biiding tygyzdauy, khalktyng ulgaruy buincha).

A community can refuse to pay the exaction for its member, forcing him to become a laborer. 672

/199/ Requiring the payment from the community is regarded as reasonable in that the clan which fears paying for a thief restrains him by moral influence from repeating his stealing. At the present time the imposition of property responsibility on the community is an outlived principle, since 1) the individual has freedom of action and is not obliged to ask permission of his neighbors before coming and going; (1) 2) as a consequence of the changing conditions of

1. The individual is free to be absent temporarily, but for transferring from one volost to another he remains completely dependant on the clan, which can fail to give its consent for his discharge. The poorest clan keeps a vigilant eye on its solvent member, whom it needs, not even speaking of charitable purposes, directly for the payment of taxes for the impoverished.

life, property among the Kazakhs is associated more and more with the individual and the close circle of the family.

If the defendant is a new arrival, the sentence is extended to his fellow travelers: fellow tradesmen, and domestics (kosdas). If none of these exist or they are without property, the defendant can be given out as a laborer.

The decision of the court was formerly executed by riders of 666

191 The decision of the court was formerly executed by riders of the khan or the riders of the biis who decided the case, but any outside person, who received remuneration from the person who won the case.

At present the volost administrators are obliged to carry out the decisions of the biis in the following order: when they have received a copy of the decision, cut out of the book, upon the approach of the date indicated in it for the payment, they announce it through village elders to the defendant, and then, in case he refuses to pay, they take an animal corresponding to the sum, which is evaluated by honorable persons. After the entire sum has been paid to the plaintiff, the volost administrator makes a note of this on the reverse side of the copy, with a voucher from the recipient, and gives it to the person who has paid.

* * *

192 In its regulation of the people's court, the law of 1867 caused it to deviate considerably from the customary court. This fact /200/ had such an essential and pernicious effect on the development of the weak sides of the courts of the biis, that their position proved to be very unsatisfactory and brought many local officials to the conviction that it was necessary to abolish this court and exchange it for the Russian court.

While according to folk custom the litigants are free to turn to any bii for the examination of a case, the law of 1867 required the Kazakhs to be judged only by the biis confirmed by the military governor. In cases where the litigants disagreed on a court of arbitration, and in practice these were very frequent, the law required the plaintiff to choose a bii expressly from the volost of the defendant. Since under the existence of the clan principle every bii naturally stands for his kinsman, the required judgment of a bii from the volost of the defendant is the equivalent of renouncing justice, for the plaintiff cannot expect impartiality from a kinsman of the defendant. Even within one volost, such an organization of the bii's court did not guarantee a just court, because with the obligation of turning to the biis in the volost and with the limitation of their number the biis were made accessible to profit, corruption, the influence of rich and honored persons, and of the electoral parties.

In order to ensure the justice of the decisions of the more important cases, the law of 1867 limited the competency of the individual biis to the sum of 100 rubles, and created extraordinary

[692] to encourage cases concerning the dismissal from official duties and bringing to trial those of their members who permitted clear abuses in their judgments. The uyezd chief presents the decrees on this subject to the oblast government.

The delivery to the sessions of the defendants and witnesses is the duty of the village authorities.

Complaints concerning unfinal decisions of single judges are transmitted in a period of two weeks from the day of the announcement of the decision to the volost administrator, for presentation to the session. After the opening of the session these complaints can be transmitted to the session itself.

[695] The people's court is carried on aloud and publicly.

/207/ Extraordinary sessions of the people's courts are designated, by order of the governor, for the judgment of cases in which residents of various uyezds or volosts are involved, as well as for the review of intercessions of the people's courts and their sessions on the banishment of the persons under sentence. The extraordinary sessions are composed of the judges of those volosts from which the litigants come or the persons under sentence, with no less than one judge from a volost.

The designation of the judges for an extraordinary session, except for those elected by the litigants, is done by the uyezd chief. Judges who have participated in previous sessions within a year take part only at their own wish.

Extraordinary sessions of the courts take place in the presence of the chief of the uyezd in which the session meets, or an official specially commandeered for this purpose. The duty of these official persons is exclusively to see to the decorum in the place of meeting of the session.

The extraordinary sessions of the people's courts act on the basis of the rules established for ordinary sessions.

[693] People's judges, who are absent from a session, ordinary or extraordinary, without legally acceptable reasons, are subject to a monetary fine of 10 rubles, by order of the uyezd chief, which can be appealed to the governor within a period of a month. These fines go for the building of places of confinement.

[696] The carrying into execution of the decisions of the people's court is laid upon the volost administrators and village elders, under the supervision of the uyezd chief. Copies of the decisions carried out, with a note of their fulfillment, are preserved with the volost administrators. Persons carrying out the decisions, as well as the uyezd chiefs supervising them, are subject to legal responsibility and the reparation for damages for slowness and improper action in this connection.

8:Kostenko -33-G-4,5(1868-80)1880 RLI Turkestan
Kazak RQ2

681 Among alomst all ancient peoples and among the Kazakhs there existed the law of retribution, that is, death for murder or rape - and mutilation for mutilation. But time and the prevalance of a new order have changed this custom. However, down to the Russian domination, ransom was permitted for murder. For the death of a man a thousand horses were usually paid, and half that for the murder of a woman. This ransom is called 'kun', and when the crime can be hidden from the Russian authorities this is done even today.

692 In general all legal judgments, civil and criminal, just as all public affairs, according to custom can never depend on the will of one person, but are always made with the agreement of several elders, beys or honored persons in general. These persons had and still have today the right to receive a tenth part of the property of the guilty person, or, if it is a civil matter, the same share from the payment of retribution which they decide. The 'baranta' is a completely unique crime among the Kazakhs. The beginning of these feuds was almost always legal, that is, they usually began from the unwillingness /347/ of one of the contesting parties to abide by the decision of the elders. In such a case the injured party had the legal right to obtain satisfaction by force, that is, to make raids, steal cattle and capture the people. It is self-evident that those who were plundered did the same in return, believing that more had been taken from them than should have been according to the legal judgment. Thus the stealing, robbery and murder committed by both sides confused the question more and more, and quarrels and feuds lasted in this way for decades, eventually even dividing clans.

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